IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 71 OF 1988

1) Mrs. Devi Gobindram Hemrajani;)
2) Ram Gobindram Hemrajani;)
3) Harish Gobindram Hemrajani;)
4) Mrs. Sudha Nanik Hemrajani. ...)Appellants.

Versus

1) Mrs. Manisha Ranjit Hemrajani;)
2) Srichand J. Bajaj (since decd.):)
2(a) Smt. Kavita S. Bajaj,widow;)
2(b) Shri Anil S. Bajaj, Son;)
2(c) Miss Ambika S. Bajaj, Daughter.)
All heirs of late Srichand J. Bajaj;)
3) The Pratibha Co-operative Housing)
Society Ltd.,Bombay-400 026. ....)Respondents.

Ms. P. Chatrapati with Mr. S.S.Dani for the Appellants.

Mr. N. G. Thakkar, Sr. Counsel with Mr. A. Sayyed i/by Mr. G. C. Mohanty for Respondent No.1.

CORAM : ANOOP V. MOHTA, J.

DATED : 22ND NOVEMBER, 2005.

JUDGEMENT :

This is the first appeal filed by the Appellants / original Plaintiffs against the Judgment and order dated 1st April, 1987 whereby, after considering the rival contentions raised with the pleadings referred to, the learned City Civil Court, Bombay (trial Court) by reasoned order, returned the plaint to the Plaintiffs for presentation to the proper court.

2. Being aggrieved by the same, the original plaintiffs, even though sought time to present the plaint to the proper Court, has preferred the present first appeal. As per the office note and order of this Court dated 13th December, 2004, the matter stood dismissed against Respondent Nos.2(a) to 2(c) and 3. The suit in question was filed before the Bombay City Civil Court at Bombay, dated 22nd October, 1984, in
fact had a foundation of prayers against these defendants i.e. Respondent No.2 and 3 viz. Srichand J. Bajaj and The Pratibha Co-operative Housing Society Limited. Apart from the merits of the matter, the order of dismissal of the present appeal against the present Respondent Nos.2 and 3, remains final and

intact. Therefore, appeal against these Respondents was already dismissed. The order, therefore, need no further discussion in so far as Respondent Nos.2 and 3 are concerned.

3. Learned Counsel appearing for the Respondent pointed out on merits and specifically paragraphs 7, 11, 16 and 17, which go to show the material for the valuation, so far as suit property in question, that "the purchase price of Rs.17,85,134/- of the suit premises was paid out of the income of joint business of the Plaintiffs". "The total price of Rs.19,11,270/- was agreed to be paid to Defendant No.2 through the said Metharam Khiani for the suit premises". In this background, the prayer clause (a) which is reproduced as under is very important to consider:

> "(a) That the Defendant No.2 and Defendant No.3 be ordered and directed by this Hon'ble Court to make necessary changes and amendments to the effect that the Plaintiffs and Defendant No.1 are the joint owners of the suit premises in all the registers and other relevant

records and documents of the said Pratibha Co-operative Housing Society Ltd.

4. On the face of record, it is very clear that this suit for declaration is nothing but a move to get all the registers and other relevant records and documents of the said Pratibha Co-operative Housing Society Limited, changed in the name of the Plaintiffs and Defendant No.1, as joint owners of the suit premises. This prayer, if taken note of, would mean the correction to the basic title of the properties through related documents. It is very clear that if such suit is allowed and prayer clause (a) is granted, it would amount to declaring ownership and/or amendment to the title deeds to the effect that the Plaintiffs and Defendant No.1 are joint owners of the suit premises for all the purposes.

5. Any declaration of this kind, taken note of by the Court, without expressing any merits of the matter at this stage, the plaint was rightly directed to be presented in the proper Court. There is nothing wrong in the judgment.

6. Learned trial Judge in fact, considered the rival contentions of both the parties and rightly come to the conclusion and directed the Plaintiffs to present the plaint to the proper Court. I see, there is no perversity or any illegality which can be said to be born out from the record or even in the reasoning, based on the plaint and the rival contentions raised by the parties.

7. Apart from above, the aspect of dismissal of this appeal against Respondent Nos.2 and 3 further disentitle the Appellants' right to seek any order of reversion, as there is no question of interfering with the reasoned order dated 1st April, 1987, when admittedly it remained final and binding against the contesting Respondents i.e. Respondent Nos.2 and 3 (Original Defendant Nos.2 and 3). Therefore, on this ground also the appeal stands dismissed.

8. Taking all this into account, the present appeal is dismissed with costs of Rs.5,000/-.

9. Ad-interim order dated 3rd February, 1988 passed on Civil Application No. 536 of 1988 also stands vacated forthwith.

Sd/-

(ANOOP V. MOHTA, J.)